

**REMARKS**

Favorable reconsideration of this application, as amended, and in light of the following discussion is respectfully requested. Claims 1-2, 4-6, 8-10, 13-14, 16-17, 19-21, 23-24, 26-29, 31-37, 39-40, 42-90, and 92-102 are pending. Claims 1, 5 and 9 have been amended. Claims 103-105 have been added.

Applicants first thank the Examiner for the indication of allowance of claims 10-21, 23, 24, 26-29, 31-91, and 97-102.

The only outstanding rejection relates to claims 1-6, 8-10 and 92-96 based upon indefiniteness under 35 U.S.C. §112, second paragraph. The Examiner states that the term "non-caloric" is indefinite since the erythritol and polyhydric alcohols contain calories. The rejection is respectfully traversed.

Claims 1, 5 and 9 have been amended as requested by the Examiner to remove the term "non-caloric." This Amendment is not a narrowing amendment, but is instead a broadening amendment which enlarges the claim scope. Regarding the Examiner's position on indefiniteness, Applicants respectfully disagree. Applicants have added claims 103-105 which specifically reintroduce the "non-caloric" language. The Examiner's attention is respectfully directed to the specification at paragraph [0032] where Applicant defined the term "non-caloric." As defined, "non-caloric" FCB's are ones "having a 100% or **near 100%** reduction in calories." Thus, the presence of a limited number of calories is envisaged by the term "non-caloric." One skilled in the art would recognize that the claimed frozen carbonated beverage can be formulated in a non-caloric form using components that contain calories. Accordingly, Applicants believe that the introduction of claims 103-105 does not introduce issues of indefiniteness. Withdrawal of this ground of rejection is respectfully requested.

If the Examiner disagrees that the present application is ready for allowance, she is respectfully requested to contact the undersigned.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments regarding indefiniteness. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, applicants submit that the entry of the amendment would place the application in better form for Appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is not indefinite. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and the continued examination of this application, and the timely allowance of the pending claims.

### **Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and the continued examination of this application and the timely allowance of the pending claims.

Customer No. 22,852  
Attorney Docket No. 7738.147

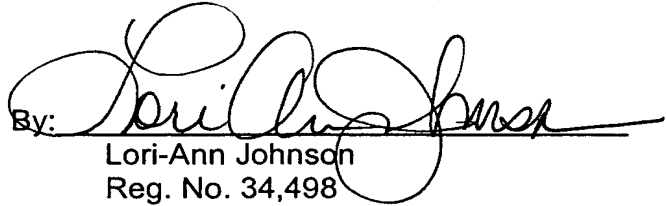
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By:



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